

HOUSE BILL No. 1402

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5.

Synopsis: Sales tax on home energy. Provides a sales tax exemption for the sale of power, light, and heat for residential use. Eliminates the sales tax exemption for home energy acquired through home energy assistance.

Effective: Upon passage; July 1, 2009.

Stevenson

January 13, 2009, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1402

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-4-5, AS AMENDED BY P.L.32-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 5. (a) As used in this section, a "power subsidiary"
4 means a corporation which is owned or controlled by one (1) or more
5 public utilities that furnish or sell electrical energy, natural or artificial
6 gas, water, steam, or steam heat and which produces power exclusively
7 for the use of those public utilities.

8 (b) A power subsidiary or a person engaged as a public utility is a
9 retail merchant making a retail transaction when the subsidiary or
10 person furnishes or sells electrical energy, natural or artificial gas,
11 water, steam, or steam heating service to a person for commercial or
12 domestic consumption.

13 (c) Notwithstanding subsection (b), a power subsidiary or a person
14 engaged as a public utility is not a retail merchant making a retail
15 transaction in any of the following transactions:

16 (1) The power subsidiary or person provides, installs, constructs,
17 services, or removes tangible personal property which is used in

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connection with the furnishing of the services or commodities listed in subsection (b).

(2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter.

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

(4) The power subsidiary or person sells the services or commodities listed in subsection (b) and all the following conditions are satisfied:

(A) The services or commodities are sold to a business that after June 30, 2004:

- (i) relocates all or part of its operations to a facility; or
- (ii) expands all or part of its operations in a facility;

located in a military base (as defined in IC 36-7-30-1(c)), a military base reuse area established under IC 36-7-30, the part of an economic development area established under IC 36-7-14.5-12.5 that is or formerly was a military base (as defined in IC 36-7-30-1(c)), a military base recovery site designated under IC 6-3.1-11.5, or a qualified military base enhancement area established under IC 36-7-34.

(B) The business uses the services or commodities in the facility described in clause (A) not later than five (5) years after the operations that are relocated to the facility or expanded in the facility commence.

(C) The sales of the services or commodities are separately metered for use by the relocated or expanded operations.

(D) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(1), the business must satisfy at least one (1) of the following criteria:

- (i) The business is a participant in the technology transfer

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program conducted by the qualified military base (as defined in IC 36-7-34-3).

(ii) The business is a United States Department of Defense contractor.

(iii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the United States Department of Defense.

(E) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(2), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).

(ii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the qualified military base (as defined in IC 36-7-34-3).

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

(5) The power subsidiary or person sells services or commodities that:

(A) are referred to in subsection (b); and

(B) qualify as home energy (as defined in IC 6-2.5-5-16.5);

to a person who acquires the services or commodities after June 30, 2006, and before July 1, 2009, through home energy assistance (as defined in IC 6-2.5-5-16.5).

SECTION 2. IC 6-2.5-5-16.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 16.7. (a) As used in this section, "building" has the meaning set forth in IC 8-1-2-36.5.**

(b) As used in this section, "home energy" means electricity, oil, gas, coal, propane, or any other fuel for use as the principal source of power, heat, or light in a residential dwelling or residential building, including a unit of a building that is served by a master meter and used as a residential dwelling. The term includes

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charges described in IC 6-2.5-1-5(c).

(c) As used in this section, "home energy supplier" means a person, including a trustee or receiver appointed by a court, engaged in furnishing or selling home energy in Indiana.

(d) As used in this section, "master meter" refers to a master meter described in IC 8-1-2-36.5.

(e) As used in this section, "residential or rental housing user" means a person that receives home energy from a home energy supplier primarily for:

- (1) personal, family, or household residential purposes; or
- (2) use in a residential dwelling or residential building, including a unit of a building that is served by a master meter and primarily rented to tenants who use the rented facilities primarily for personal, family, or household residential purposes.

(f) A retail transaction involving the sale of home energy to a residential or rental housing user is exempt from the state gross retail tax.

(g) The department may establish streamlined procedures for the implementation of this section that minimize or eliminate the:

- (1) need to apply for an exemption certificate or a refund to obtain the exemption provided by this section; and
- (2) record keeping requirements and procedures that a retail merchant must follow to make retail transactions that are exempt under this section.

(h) This subsection applies when electricity, oil, gas, coal, propane, or any other fuel is delivered through a master meter to a building that has both residential or rental housing users and persons that are not residential or rental housing users. The department may establish procedures for the apportionment of sales for the building between exempt and nonexempt transactions based on an estimate computed under a formula approved by the department.

SECTION 3. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008, SECTION 314, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by

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(2) seven percent (7%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) seven percent (7%).

Except to the extent that a different procedure is permitted under IC 6-2.5-5-16.7, unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

SECTION 4. IC 6-2.5-5-16.5 IS REPEALED [EFFECTIVE JULY 1, 2009].

SECTION 5. [EFFECTIVE UPON PASSAGE] (a) **As used in this SECTION, "department" refers to the department of state revenue established by IC 6-8.1-2-1.**

(b) **For purposes of IC 6-2.5-5-16.7, as added by this act, IC 6-2.5-4-5 and IC 6-2.5-7-3, both as amended by this act, and IC 6-2.5-5-16.5, as repealed by this act, only transactions for which the charges are collected upon original statements and billings dated after July 31, 2009, shall be considered as having occurred after June 30, 2009.**

(c) **The department may adopt temporary rules in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1 to implement any combination of IC 6-2.5-5-16.7, as added by this act, IC 6-2.5-4-5 and IC 6-2.5-7-3, both as amended by this act, and IC 6-2.5-5-16.5, as repealed by this act.**

(d) **A rule adopted under this SECTION expires on the earliest of the following:**

(1) **The date a rule is adopted by the department under IC 4-22-2 that repeals, amends, or supersedes the temporary rule.**

(2) **The date another temporary rule is adopted under this SECTION to replace an earlier rule adopted under this SECTION.**

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1 **(3) The date specified in the temporary rule.**
2 **(4) December 31, 2009.**
3 **SECTION 6. An emergency is declared for this act.**

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